

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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**MEMORANDUM**

**September 6, 2018**

**To: Subcommittee on Health Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Subcommittee Markup of H.R. 3325, the “Advancing Care for Exceptional (ACE) Kids Act”; H.R. 3891, To amend title XIX of the Social Security Act to clarify the authority of State Medicaid fraud and abuse control units to investigate and prosecute cases of Medicaid patient abuse and neglect in any setting, and for other purposes; H.R. 5306; the “Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources and (EMPOWER) Care Act”; Discussion Draft, To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit group health plans, health insurance issuers, prescription drug plan sponsors, and Medicare Advantage organizations from limiting certain information on drug prices; Discussion Draft, the “Strengthening the Health Care Fraud Prevention Task Force Act of 2018”; and Discussion Draft, To amend title XIX of the Social Security Act to provide the Medicare Payment Advisory Commission with access to certain drug rebate information**

On **Friday, September 7, 2018, at 9:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Health will hold a markup of the following six bills and discussion drafts: H.R. 3325, the “Advancing Care for Exceptional (ACE) Kids Act”; H.R. 3891, To amend title XIX of the Social Security Act to clarify the authority of State Medicaid fraud and abuse control units to investigate and prosecute cases of Medicaid patient abuse and neglect in any setting, and for other purposes; H.R. 5306, the “Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources and (EMPOWER) Care Act”; Discussion Draft, To amend title XXVII of the Public Health Service Act and title XVIII of the Social Security Act to prohibit group health plans, health insurance issuers, prescription drug plan sponsors, and Medicare Advantage organizations from limiting certain information on drug prices; Discussion Draft, the “Strengthening the Health Care Fraud Prevention Task Force Act of 2018”; and Discussion Draft, To amend title XIX of the Social Security Act to provide the Medicare Payment Advisory Commission with access to certain drug rebate information.

## **I. H.R. 3325, ADVANCING CARE FOR EXCEPTIONAL KIDS ACT**

H.R. 3325, the Advancing Care for Exceptional Kids Act (ACE Kids Act) introduced by Reps. Barton (R-TX) and Castor (D-FL) aims to improve care coordination for children with medically complex conditions in the Medicaid program. An Amendment in the Nature of a Substitute (AINS) to H.R. 3325 is expected to be offered. The Subcommittee held a hearing on the AINS on September 5, 2018.<sup>1</sup>

The AINS would establish a Medicaid health home state option specifically targeted for children with medically complex conditions. A state that takes up this option would receive a 90 percent enhanced Federal Medical Assistance Percentage (FMAP) for care coordination for the first eight fiscal year quarters that the state plan amendment (SPA) takes effect. The AINS also requires the Secretary to issue guidance to state Medicaid programs regarding best practices for using out of state providers for children with medically complex conditions, coordinating care with out of state providers, reducing barriers to care from out of state providers, and processes for screening and enrolling out of state providers. States must demonstrate in their SPA how they intend to improve care coordination and management and remove barriers to out of state care for children with medically complex conditions.

## **II. H.R. 3891, TO AMEND TITLE XIX OF THE SOCIAL SECURITY ACT TO CLARIFY THE AUTHORITY OF STATE MEDICAID FRAUD AND ABUSE CONTROL UNITS TO INVESTIGATE AND PROSECUTE CASES OF MEDICAID PATIENT ABUSE AND NEGLECT IN ANY SETTING, AND FOR OTHER PURPOSES**

H.R. 3891, introduced by Reps. Walberg (R-MI) and Welch (D-VT), would expand the authority of Medicaid Fraud Control Units (MFCUs) to investigate and prosecute Medicaid fraud and beneficiary abuse and neglect in non-institutional settings or any other setting. The Subcommittee held a hearing on H.R. 3891 on September 5, 2018.<sup>2</sup>

## **III. H.R. 5306, ENSURING MEDICAID PROVIDES OPPORTUNITIES FOR WIDESPREAD EQUITY, RESOURCES, AND CARE (EMPOWER CARE) ACT**

H.R. 5306, the Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and Care Act (EMPOWER Care Act) introduced by Reps. Guthrie (R-KY) and Dingell (D-MI), would reauthorize the Money Follows the Person (MFP) Rebalancing Demonstration Grant for five years at \$450 million each year. The legislation would change the institutional residency period from 90 days to 60 days, thereby increasing the number of beneficiaries eligible for the program. It also requires the HHS Secretary to submit a report to

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<sup>1</sup> House Committee on Energy and Commerce, *Opportunities to Improve Health Care*, 115th Cong. (Sept. 5, 2018) (<https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-opportunities-to-improve-health-care-subcommittee-on-health>).

<sup>2</sup> *Id.*

the President and Congress not later than September 30, 2020, detailing best practices from state MFP programs. The Subcommittee held a hearing on H.R. 5306 on September 5, 2018.

**IV. H.R. \_\_, TO AMEND TITLE XXVII OF THE PUBLIC HEALTH SERVICE ACT AND TITLE XVIII OF THE SOCIAL SECURITY ACT TO PROHIBIT GROUP HEALTH PLANS, HEALTH INSURANCE ISSUERS, PRESCRIPTION DRUG PLAN SPONSORS, AND MEDICARE ADVANTAGE ORGANIZATIONS FROM LIMITING CERTAIN INFORMATION ON DRUG PRICES**

H.R. \_\_\_\_, prohibits any group health plan or health insurance issuer, as well as any Medicare Part D plan sponsor or Medicare Advantage organization from construing a policy or contract term to prevent pharmacists from informing consumers that their prescription could be purchased for a lower price if paid out-of-pocket instead of through their insurance plan. This discussion draft increases consumer transparency and understanding by informing patients that they can obtain their prescriptions for a lower cost in some cases than under their insurance plan's cost-sharing allocations, and promotes consumer understanding that they may save money by choosing to pay out-of-pocket instead. The bill would be effective for plan years beginning on or after January 1, 2020. The Subcommittee held a hearing on this discussion draft on September 5, 2018.<sup>3</sup>

**V. H.R. \_\_, STRENGTHENING THE HEALTH CARE FRAUD PREVENTION TASK FORCE ACT OF 2018**

H.R. \_\_\_\_, codifies the Health Fraud Prevention Partnership (HFPP), a public-private partnership between the federal government, law enforcement, state health agencies, private health insurance plans, and health care anti-fraud associations. HFPP exchanges data and information between the partners to combat fraud, waste, and abuse in the health care sector. Eighty-five public, private, and state organizations participated in HFPP in FY2017.

The discussion draft authorizes the HFPP and ensures adequate transparency requirements are in place to enable HFPP to fulfill its mission. The Subcommittee held a hearing on this discussion draft on September 5, 2018.<sup>4</sup>

**VI. H.R. \_\_, TO AMEND TITLE XIX OF THE SOCIAL SECURITY ACT TO PROVIDE THE MEDICARE PAYMENT ADVISORY COMMISSION WITH ACCESS TO CERTAIN DRUG REBATE INFORMATION**

H.R. \_\_\_\_, provides the Medicare Payment Advisory Commission (MedPAC) and the Medicaid and CHIP Payment and Access Commission (MACPAC) with access to drug pricing and rebate data under Medicare Parts B and D, as well as under Medicaid. Currently, MedPAC and MACPAC lack access to this data and are limited in their ability to analyze and provide information on related topics to Congress, such as issues related to prescription drug costs.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Letters explaining the need for this data from the Chairs of MedPAC and MACPAC were entered into the record at a Subcommittee hearing on September 5, 2018.